

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-0157V

UNPUBLISHED

MICHAEL HILEMAN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: March 2, 2023

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Katherine Carr Esposito, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 6, 2021, Michael Hileman filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that he suffered a shoulder injury related to vaccine administration (“SIRVA”) as a result of an influenza vaccination he received on September 12, 2020. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 3, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for Petitioner’s SIRVA. On March 2, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$60,714.85, representing \$65,000.00 in actual pain and suffering and \$714.85 in out-of-pocket expenses. Proffer at 1. In the Proffer, Respondent represented that Petitioner agrees with

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$60,714.85, representing \$60,000.00 in actual pain and suffering and \$714.85 in unreimbursed expenses, in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

MICHAEL HILEMAN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-157V (ECF)
Chief Special Master Corcoran

RESPONDENT’S PROFFER OF COMPENSATION

On January 6, 2021, Michael Hileman (“petitioner”) filed a Petition for Compensation (“petition”) under the National Childhood Vaccine Injury Act of 1986, as amended (“the Vaccine Act” or “the Act”). 42 U.S.C. §§ 300aa-1 to -34. Petitioner alleges that he suffered a Table shoulder injury related to vaccine administration (“SIRVA”). *See* Petition at 1. On January 3, 2023, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) Report indicating that this case is appropriate for compensation under the terms of the Act, and the Chief Special Master subsequently issued a Ruling on Entitlement finding petitioner entitled to compensation. ECF No. 29; ECF No. 30.

I. Items of Compensation

Respondent proffers that petitioner be awarded \$60,714.85 for all damages available pursuant to 42 U.S.C. § 300aa-15(a). Of the total amount, \$60,000.00 represents an award for actual pain and suffering, and \$714.85 represents documented out-of-pocket medical expenses paid for by petitioner. There are no other claimed categories of compensation. Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Petitioner requests and respondent recommends that the compensation provided to petitioner should be made through a lump sum payment, and respondent requests that the Chief Special Master's decision and the Court's judgment award the following: ¹ a lump sum of \$60,714.85 in the form of a check payable to petitioner, Michael Hileman.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Michael Hileman: **\$60,714.85**

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

TRACI R. PATTON
Assistant Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future medical expenses, future pain and suffering, and future lost wages.

s/Katherine C. Esposito
Katherine C. Esposito
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington D.C. 20044-0146
Tel: (202) 305-3774
katherine.esposito@usdoj.gov

Dated: March 2, 2023